83-445

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

THE OAKLAND RAIDERS, a limited partnership,
Petitioner,

vs.

THE CITY OF BERKELEY, a municipal corporation,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
to the Court of Appeal of the State of California,
First Appellate District, Division Five

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QUESTION PRESENTED FOR REVIEW

The question presented by this petition is:

Whether the Court of Appeal of the State of California correctly concluded that the City of Berkeley's "Professional Sports Events License Tax" did not deprive the Oakland Raiders of the equal protection guarantees of the United States Constitution.

SUBJECT INDEX

TABLE OF AUTHORITIES CITED

Cases

Other Authorities

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Petitioner, The Oakland Raiders, a limited partnership, prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California, First Appellate District, Division Five, as announced in the court's opinion filed June 3, 1983, a rehearing in connection with which was denied on June 23, 1983.

OPINION BELOW

The opinion of the Court of Appeal is reported at 143 CA 3d 636 and appears as Appendix A.

JURISDICTION

The judgment of the Court of Appeal was entered on June 3, 1983. A timely petition for rehearing was filed and the court's order denying rehearing was filed on June 23, 1983. The Court's order appears as Appendix B. There-

after, the Raiders' petition for hearing to the Supreme Court of the State of California was denied on July 27, 1983 and the order of the Supreme Court appears as Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISION INVOLVED

The following constitutional provision is involved in the case at bar:

> "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., amend. XIV, § 1.

STATEMENT OF THE CASE

This case arises out of the enactment by the City Council of the City of Berkeley, on July 9, 1974, of the "Professional Sports Events License Tax" (Ordinance No. 4703-N.S.). That ordinance imposed a ten percent gross receipts tax on professional sports events held within the City of Berkeley. It is petitioner's contention that enforcement of said ordinance denies petitioner equal protection of the laws.

Petitioner (hereinafter referred to as Raiders) owns and operates the professional football team known as the Raiders. During the years 1972 and 1973 the Raiders' professional football games constituted the only major professional sports event held in the City of Berkeley. The games were held at the University of California Memorial Stadium and, in connection with each game held, the City of Berkeley was reimbursed by Raiders for police services provided.

As early as September 1973 respondent's City Council, by resolution, urged the University of California not to schedule further professional football games in Memorial Stadium.

In June 1974, respondent's City Council discussed the possible complete prohibition of professional football games in the City but was advised by the City Attorney that such a measure would be unconstitutional and a different approach would have to be taken.

Thereafter, effective July 9, 1974, the council amended the existing business license tax by adopting, as an urgency measure, ordinance 4703-NS, the Professional Sports Event License Tax. That ordinance imposed a 10% gross receipts tax on professional sporting events performed in the City of Berkeley, a rate 25 times that imposed on any other business in the City of Berkeley.

Subsequent to the enactment of the ordinance, the Raiders played four professional football games at the University of California Memorial Stadium in Berkeley. The games were played on August 10 and September 7, 1974 and August 10 and August 17, 1975.

On July 31, 1974 the Raiders commenced action number 452755-6 by filing its Complaint for Injunctive and Declaratory Relief by which it sought a permanent injunction against the enforcement of the tax and a declaration of its invalidity. The Complaint alleged *inter alia* unreasonable discrimination denying the Raiders equal protection of the laws in violation of § 1 of the Fourteenth Amendment. Following a hearing on the Raiders' application for a preliminary injunction, the court, on August 8, 1974, is-

sued a preliminary injunction precluding enforcement of the tax during the pendency of the action.

Discovery then ensued and, on June 5, 1975, the court granted Raiders' motion for summary judgment on the ground that, to the extent the tax sought to apply to professional football games to be performed at the University of California Memorial Stadium, it was an unlawful attempt to regulate the conduct of the Regents of the University.

The City of Berkeley appealed from that judgment, and, on November 29, 1976, the Court of Appeal of the State of California reversed the judgment of the trial court on the ground that the tax constituted a revenue rather than a regulatory measure. Thereafter, on February 1, 1977, the Court of Appeal's remittitur issued to the Superior Court.

Following the issuance of the remittitur, the City of Berkeley commenced action number 501020-8 and, by its First Amended Complaint, sought recovery of the tax allegedly due from the Raiders. The Raiders responded to the Complaint by filing its Answer in which it asserted, as an affirmative defense, the unconstitutionality of the tax.

Thereafter, on March 6, 1979, the two actions were consolidated and, on April 16, 1979, trial was held. On September 11, 1979, judgment was entered in favor of the City of Berkeley and against the Raiders in both actions and a timely appeal from that judgment was taken by Raiders, which appeal argued, *inter alia*, that the ordinance deprived the Raiders of equal protection of the laws.

The Court of Appeal's decision, in favor of the City of Berkeley, was subsequently filed on June 3, 1983; the

Raiders' Petition for Rehearing was denied on June 23, 1983, and a petition for hearing to the Supreme Court of the State of California was denied on July 27, 1983.

REASONS FOR GRANTING WRIT

THE PROFESSIONAL SPORTS EVENTS LICENSE TAX ENACTED BY THE CITY OF BERKELEY DEPRIVES THE RAIDERS OF ITS RIGHT TO EQUAL PROTECTION OF THE LAWS

In this case the California Court of Appeal concluded that enforcement of the Professional Sports Events License Tax enacted by the City of Berkeley does not deny Petitioner its right to equal protection of the laws. In so holding the court summarily concluded that:

> "Measured against existing precedents involving similar legislation', we conclude that the city can classify professional sporting events differently from other businesses, and can also exempt amateur or school-connected athletic events and impose a tax upon those that exist for profit. We hold that the tax in question is rationally based." (Appendix A, p. 5)

It is the Raiders' contention that the Court of Appeal erred in reaching the foregoing conclusion, particularly in light of the fact that the conclusion was reached without analysis of whether the classification had a fair and substantial relation to the object or purpose of the legislation; without comment on the evidence in the record, and with the citation of authorities which are neither dispositive nor persuasive. The court simply concluded that the tax is rationally based.

The Raiders recognize that legislative bodies have broad discretion in making classifications of persons or property

for the purpose of taxation, and that business taxes are presumed to be rationally based. Nevertheless, a business license tax must satisfy equal protection standards, and it is accepted that a classification contained in a license tax must be reasonable, based on substantial differences between the pursuits separately grouped, and not arbitrary. *Fox Bakersfield Theater Corp. v. City of Bakersfield,* 36 C. 2d 136, 142 (1950). The State must proceed upon a rational basis, and may not resort to a classification that is palpably arbitrary. *Allied Stores of Ohio, Inc. v. Bowers,* 358 U.S. 522, 527, 3 L. Ed. 2d 480, 485 (1958).

An analysis of whether there is a "rational basis" requires consideration of the objective or purpose of the ordinance. The rule often has been stated to be that the classification must rest upon some ground or difference having a fair and substantial relation to the object of the legislation. (See *Allied Stores of Ohio v. Bowers, supra,* p. 527, and cases cited therein). More particularly, the equal protection clause precludes legislation which results in different treatment of different classes of persons on the basis of criteria wholly unrelated to the objective of the statute. *Eisenstadt v. Baird,* 405 U.S. 438, 31 L. Ed. 2d 349 (1972). Rather, such a classification must rest on real and not feigned differences, and the distinction must have some relevance to the purpose for which the classification is made. *Walters v. St. Louis,* 347 U.S. 231, 237, 98 L. Ed. 660, 665 (1953).

In determining whether a classification is arbitrary or reasonably related to the inherent purpose of the law, the court must review the facts and circumstances surrounding the enactment, and the subject matter, in light of the presumption of the validity of the classification. *McLaughlin*

v. Florida, 379 U.S. 184, 13 L. Ed. 222, (1964). The court must conduct a serious and genuine judicial inquiry into the correspondence between the challenged classification and the legislative goal. *Talley v. Municipal Court,* 87 C.A. 3d 109 (1978).

It is the Raiders' contention that the City of Berkeley has failed, at every stage of these proceedings, to demonstrate any fair and substantial relationship of the classification scheme of this ordinance to its objective, and that the Raiders submitted adequate evidence to rebut any presumption of constitutional validity. A brief review of the evidence will demonstrate the merit of that contention.

As set forth in the Statement of the Case, *supra,* during the years 1972 and 1973 the Raiders' professional football games constituted the only major professional sports event held in the City of Berkeley. The games were held at the University of California Memorial Stadium and, in connection with each game held, the City of Berkeley was reimbursed by the Raiders for police services provided.

As early as September, 1973, Berkeley's City Council, by resolution, urged the University of California not to schedule further professional football games in Memorial Stadium. By June, 1974, the City Council discussed the possible complete prohibition of professional football games in the city but was advised by the City Attorney that such a measure would be unconstitutional and a different approach would have to be taken. Thereafter, effective July 9, 1974, the City Council enacted Ordinance 4703-NS and made the following findings:

> "This council finds and determines that public peace, health and safety are endangered by the holding of

> professional sports events in the City of Berkeley, and municipal traffic control, police, fire prevention, sanitary sewer and refuse collection services are materially and substantially increased by such events."

The ordinance imposed a tax at a rate of ten percent of gross receipts, a rate 25 times greater than that imposed on any other business taxed on a gross receipts basis in the City of Berkeley.

In addition, petitioner offered in evidence certain answers to interrogatories of officials of the City of Berkeley. The answers were to interrogatories framed in the form of the findings referred to above, which findings purportedly justified the enactment of the Professional Sports Events License Tax. Thus, interrogatory number 6 was:

> "Do you contend that the holding of professional sports events in the City of Berkeley materially and substantially increase municipal traffic control, police, fire prevention, sanitary sewer and refuse collection services provided by the City?"

Instead of providing the anticipated affirmative response to the interogatory, which may have suggested a potentially permissible objective, respondent's answer was "no" and it then sought to explain why it apparently did not contend its own findings were accurate.

Based upon its negative answer to interrogatory number 6, the City of Berkeley stated that interrogatory number 7, which asked for a calculation of the amount by which municipal services were increased as a result of the holding of professional sporting events, was not applicable.

Despite the foregoing showing by petitioner the City of Berkeley offered no evidence of the objective of the ordi-

nance. Thus, the City offered no evidence to show any purported burden created by the holding of professional sports events in the City of Berkeley, offered no evidence to show how 50,000 people attending a professional sports event created a greater burden than 50,000 people attending an amateur sports event, or for that matter, a professional rock concert; offered no evidence to show any cost analysis of the purported burden imposed upon the City by professional sports events; offered no evidence of any purported relationship between the exorbitant tax rate imposed and the cost of increased municipal services allegedly required by professional sports events; and offered no evidence to support the findings of the City Council in adopting the ordinance, even after appellant read into evidence the above quoted answers to interrogatories in which the findings were disavowed.

Petitioner urges the court that the state of the record as noted is more than sufficient to overcome any presumption of validity upon which the City of Berkeley might seek to rely. Moreover, this Court has held, in the context of a challenge to a denial of a license to a milk dealer on equal protection grounds, that the Court has ". . . no right to conjure up possible situations which might justify the discrimination." *Mayflower Farms, Inc. v. Ten Eyck*, 297 U.S. 266, 274, 80 L. Ed. 675, 679 (1936).

This failure of the City of Berkeley to offer any evidence of the legislative objective or purpose of the ordinance distinguishes the instant case from frequently cited and otherwise similar cases involving equal protection challenges to tax statutes.

Thus, for example, in the case of *Gutknecht v. City of Sausalito*, 43 C.A. 2d 269 (1974) the California Court of Appeal upheld a tax on take-out food establishments in the face of an equal protection challenge but did so only after noting:

> "... The record contains extensive evidence indicating the take-out food businesses create a substantial litter burden upon the City. The revenue measure was intended to meet that burden, hence there is a reasonable relationship between the distinct class and the object of the legislation ... [43 C.A. 3d 279]
>
> '... In this case, we find nothing in the tax rate to refute the valid classification of take-out food establishments, particularly in light of the fact that the revenue produced was approximately equal to the calculated burden. Moreover, we find nothing in the record to support the contention that the tax rate is confiscatory or that the tax rate is merely a subterfuge for driving the Merchants out of the City.' [43 C.A. 3d 280]."

Nor are the cases cited by the Court of Appeal in support of its conclusion persuasive.

In *Pittsburgh v. Alco Parking Corp.*, 417 U.S. 369 (1974), a tax on private off-street parking lots in competition with municipally owned lots and residential lots was upheld, but that case was before the Supreme Court on certiorari following the invalidation of the ordinance by the Pennsylvania Supreme Court as an uncompensated taking of property contrary to the *Due Process Clause* of the Fourteenth Amendment. The Equal Protection Clause argument was disposed of by the Pennsylvania Supreme Court and was not addressed by the U.S. Supreme Court. Moreover, the Court addressed, in its due process analysis, the purpose

of the ordinance, and it noted that ". . ., the state court itself recognized that commercial parking lots are a proper subject for special taxation and that the city had decided, 'not without reason, that commercial parking operations should be singled out for taxation to raise revenue because of traffic related problems engendered by these operations'." *Pittsburgh v. Alco Parking Corp.*, supra, p. 375. Thus, at the level that the Equal Protection Clause was addressed, the Court appropriately considered the objective of the legislation.

Fox etc. Corp. v. City of Bakersfield, 36 C. 2d 136 (1950), upheld a higher tax on motion picture theaters than on other places of amusement or entertainment. It also held, however, that:

> "While the classification should be reasonable, natural and just, *in the absence of a showing to the contrary*, it will be assumed that there are good grounds for the classification, and the act will be upheld." (Emphasis added.) *Fox etc. Corp. v. City of Bakersfield*, supra at 142.

The Raiders submit that a "showing to the contrary" is reflected in the record, and that therefore the assumption of good grounds for the classification has been effectively questioned.

Hanson v. Town of Antioch, 18 C 2d 110 (1941) upheld a higher tax on merchants without a fixed place of business than on merchants with a fixed place of business within the city. The opinion relied primarily, however, on the rule established in *Sivertzen v. City of Menlo Park*, 17 C 2d 197 (1941), and that case commented extensively on the duty of the Court of Appeal:

> "Because of the familiarity of the local legislative bodies with such local problems, their ultimate deci-

> sions as expressed by the taxing ordinances should not be easily disturbed. It is the duty of this court only to guard against attempts on the part of such local authorities to create a tariff barrier in favor of local businesses. *If such attempt is shown by gross disparities, extraordinarily large exactions, or from other surrounding circumstances then, and only then, will such an ordinance be declared unconstitutional.* We do not find such elements present in the ordinance here being considered." *Supra*, p. 203. (Emphasis added.)

Petitioner submits that the recognition of this duty of analysis by the Court of Appeal distinguishes the cited case from the opinion of the Court of Appeal in the instant case.

People v. Keith Railway Equipment Co., 70 CA 2d 339 (1945), upheld the separate classification of privately owned railway cars, but the opinion also commented on the duty of the court (quoting from *Carmichael v. Southern Coal and Coke Co.*, 301 U.S. 495, 510, 81 L.Ed. 1245, 1253):

> "In the nature of the case [a legislature] cannot record a complete catalogue of the considerations which move its members to enact laws. *In the absence of such a record* courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action." *People v. Keith Railway Equipment Co., supra*, p. 358. (Emphasis added.)

Petitioner respectfully submits, therefore, that the authority cited by the Court of Appeal in the instant case is not persuasive. The cases support the proposition that

the City of Berkeley is permitted to create separate classes for the purpose of imposing a business license tax, but they do not suggest that the court should consider that enactment of such legislation should result in a conclusive presumption of constitutional validity. In fact, each case contains language supporting petitioner's contention that the presumption of validity can be rebutted by evidence submitted at trial.

CONCLUSION

It is clear that the Professional Sports Events License Tax is not based upon natural distinctions inherent in the class of business taxed; nor are those purported distinctions reasonably related to the object of the legislation. Rather, the ordinance constitutes an arbitrary and discriminatory piece of legislation, the apparent sole purpose of which was to prohibit the performance of Raiders professional football in the City of Berkeley.

The California Court of Appeal has, for practical purposes, held that the presumption of validity which attaches to such classification is conclusive rather than rebuttable. In so doing, the court has held that even in the face of a showing that the ordinance was directed specifically at the taxpayer, exempted other businesses which could reasonably be expected to create similar demands on public services, and contained findings later contradicted by the taxing entity in answers to interrogatories, there was no necessity for any showing by the entity in support of the legislation. The effect of this decision of the Court of Appeal is to essentially preclude equal protection attack on any tax legislation, regardless of the egregiousness of

that legislation, and thereby to grant to the legislature virtual immunity from the equal protection guarantees of the Fourteenth Amendment.

It is therefore respectfully submitted that this petition for a writ of certiorari should be granted.

Dated: September 14, 1983

Respectfully submitted,

RALPH A. LOMBARDI
Attorney for Petitioner

(Appendices follow)

Appendix A

In the Court of Appeal of the
State of California

First Appellate District

Division Five

AO11825

1 Civil 49775

Alameda County
Superior Court

No. 501020-8

City of Berkeley,
Plaintiff and Respondent,

v.

The Oakland Raiders,
Defendant and Appellant.

[Filed June 3, 1983]

This appeal presents the second half of the City of Berkeley versus The Oakland Raiders, wherein the Raiders continue to contest the city's professional sports events license tax. In *Oakland Raiders v. City of Berkeley* (1976) 65 Cal.App.3d 623 (*Raiders I*), this court reversed a summary judgment in favor of the Raiders and upheld the ordinance in question as (1) a valid revenue measure within the police power of the city rather than a regulatory scheme, and (2) a tax on the privilege of performing a business, rather than a tax upon the property of the Uni-

versity of California where the Raiders' professional football games were played. The case was then tried, resulting in a judgment for the city. In this appeal the Raiders contend that: (1) The trial court erred in rejecting their timely request for findings; (2) the tax cannot be applied to concession income paid to the Raiders by their licensed vendors at the games; (3) the tax cannot be applied to receipts from advance ticket sales prior to the enactment of the ordinance, although the games occurred thereafter; and (4) the tax violates the equal protection clause of the California Constitution, article I, section 11, and the United States Constitution, amendment XIV, section 1. We affirm the judgment.

The facts are undisputed. The city enacted a "Professional Sports Events License Tax" (Ordinance No. 4703-N.S.),[1] effective July 9, 1974, subjecting promoters of pro-

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[1]Ordinance No. 4703-N.S. provides:

"Section 1.2-26. PROFESSIONAL SPORTS EVENT.

"As used in this Ordinance, 'professional sports event' shall mean any sporting activity held at any place in the City of Berkeley wherein the participants are paid or compensated for their sporting services, whether in cash, securities, or otherwise and regardless of the amount of such services. Said definition shall not include athletes or students participating in athletic events wherein such athletes or students receive scholarships, grants-in-aid or similar financial support for educational purposes.

"Section 5.9. GROSS RECEIPTS TAX ON PROFESSIONAL SPORTS EVENTS.

"Every person commencing, transacting or carrying on any professional sports event in the City of Berkeley shall pay an annual license tax of ten percent (10%) of gross receipts measured as of the time or times such event or events as to which this tax is applicable may commence, be transacted or carried on in the City of Berkeley."

fessional sports events to an annual license tax of ten percent of the gross receipts derived therefrom. The Raiders subsequently played two games in the city in 1974, and two in 1975. Concessions were sold at all four games by third party vendors who paid the Raiders a percentage of all sales. With regard to the 1974 games, approximately 50,840 season tickets were sold prior to the effective date of the ordinance, and attendance at each of those games was less than 50,000.

FINDINGS OF FACT WERE NOT REQUIRED

Following receipt of the trial court's "Notice of Intended Decision," the Raiders timely requested findings of fact and conclusions of law which were denied on the grounds that "no disputed issues of fact" existed. We conclude that the trial court was correct and that no error occurred.[2] Findings are not required when the facts are admitted or established by stipulation. (*Taylor v. George* (1949) 34 Cal.2d 552, 556.) There is no dispute concerning the wording of the ordinance, its effective date, the date of the games, the number of pre-sold season tickets to the 1974 games, or the manner in which concession income was derived, and the parties stipulated to the amount of the gross receipts. The Raiders are contesting the constitutionality of the ordinance and its legal interpretation. Under these circum-

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[2]The trial occurred prior to the amendment of Code of Civil Procedure section 632 and rule 232 eliminating the necessity of findings of fact and conclusions of law and substituting in lieu thereof a statement of decision.

stances, no findings are required.[3] (See 4 Witkin, Cal. Procedure (2d ed. 1971) Trial, § 306, subd. (e).)

THE RAIDERS WERE NOT DENIED EQUAL PROTECTION

The Raiders argue that the tax deprives them of the equal protection guarantees of the state and federal constitutions because the city discriminated against professional sports events by levying the tax on them but not on amateur athletic events or other businesses. "[T]he power of [legislative bodies] to make classifications of persons or property for the purpose of taxation is very broad." (*Roth Drug, Inc. v. Johnson* (1936) 13 Cal.App.2d 720, 733.) Business taxes are presumed to be rationally based if any conceivable state of facts exists to support them. (*City of San Jose v. Donohue* (1975) 51 Cal.App.3d 40, 45; *Ladd v. State Bd. of Equalization* (1973) 31 Cal.App.3d 35, 38; see also *Pittsburgh v. Alco Parking Corp.* (1974) 417 U.S. 369.) Businesses, occupations and the entertainment industry may properly be subdivided and classified separately for license tax purposes. (*Tax Commissioners v. Jackson* (1930) 283 U.S. 527, 537; *Fox etc. Corp. v. City of Bakersfield* (1950) 36 Cal.2d 136, 142-143.) "No constitutional rights are violated if the burden of the license tax falls equally upon all members of a class, though other classes have lighter burdens or are wholly exempt, provided that

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[3]The city has adopted the Statement of Facts set forth in the Raiders' brief. The legal arguments advanced by the Raiders are all based on facts which the city accepts. The Raiders do not suggest what facts were in dispute, nor do they suggest any findings the trial court should have made.

the classification is reasonable, based on substantial differences between the pursuits separately grouped, and is not arbitrary." (*Fox etc. Corp., supra,* 36 Cal.2d at p. 142.) Measured against existing precedents involving similar legislation,[4] we conclude that the city can classify professional sporting events differently from other businesses, and can also exempt amateur or school-connected athletic events and impose a tax upon those that exist for profit. We hold that the tax in question is rationally based. The Raiders argue that the amount of the tax is unreasonable, but there is no requirement that the amount of the tax be reasonable—merely that it not be confiscatory nor prohibitory. (*Fox etc. Corp., supra* 36 Cal.2d at p. 139.) There is no evidence that this tax falls into those categories.

NO DENIAL OF DUE PROCESS

The argument that the taxation of gross receipts acquired prior to the enactment of the ordinance from advance ticket sales constitutes a deprivation of property without due process of law misconstrues the nature of the

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[4]As a partial example, see *Pittsburgh v. Alco Parking Corp.* (1974) 417 U.S. 369 (upholding a tax on private, off-street parking lots in competition with municipally owned lots and residential lots); *Fox etc. Corp. v. City of Bakersfield* (1950) 36 Cal.2d 136 (upholding a higher tax on motion picture theatres than on other places of amusement or entertainment); *Hansen v. Town of Antioch* (1941) 18 Cal.2d 110 (upholding a higher tax on itinerant peddlers than on businesses with a fixed place of business within the city); *Gutknecht v. City of Sausalito* (1974) 43 Cal.App.3d 269 (upholding a higher tax on "take-out food" restaurants than conventional restaurants); *People v. Keith Railway Equipment Co.* (1945) 70 Cal.App.2d 339 (upholding a higher tax on privately owned railway cars than those owned by railway companies).

tax and compares it to an income tax, which it is not. Rather, it is a license tax upon the privilege of conducting a business. (*Raiders I, supra,* 65 Cal.App.3d at p. 627; *Franklin v. Peterson* (1948) 87 Cal.App.2d 727, 733.) In this instance, the business taxed is the exhibition of professional football games occurring after the enactment of the ordinance. The gross receipts are merely the yardstick by which the license is measured. The Raiders were accorded due process. (See *Westfield-Palos Verdes Co. v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 486, 493-496.)

CONCESSION INCOME IS INCLUDED IN GROSS RECEIPTS

Finally, the Raiders contend that funds received from vendors they licensed to provide food and drink for fans attending the ball games should not be included in their gross receipts. They cite no authorities to support this proposition. However, the ordinance defines gross receipts to include such income. Section 1.2-3 of the ordinance states, in pertinent part: " 'Gross receipts' means the total amount of the sale price of all sales and the total amount charged or received for the performance of any act, service, or employment of whatever nature it may be, for which a charge is made or credit allowed, whether or not such service, act, or employment is done as a part of or in connection with the sales of goods, wares or merchandise." Applying established rules of statutory construction (see *Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified Sch. Dist.* (1978) 21 Cal.3d 650, 658-659), we agree

with the trial court that the ordinance encompasses such funds.

The judgment is affirmed.

HANING, J.

We concur:

LOW, P.J.

KING, J.

AO11825/1 Civil 49775

Appendix B

In the Court of Appeal of the
State of California
in and for the
First Appellate District

Division Five

No. AO11825

Alameda Superior Court No. 501020-8
City of Berkeley, etc.,
Plaintiff and Respondent,

vs.

The Oakland Raiders, etc.,
Defendant and Appellant.

[Filed June 23, 1983]

BY THE COURT:

The petition for rehearing is denied.

Dated: June 23, 1983

LOW, P.J.

Appendix C

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

July 27, 1983

I have this day filed Order

HEARING DENIED

In re: 1 Civ. No. 49775

The City of Berkeley

vs.

The Oakland Raiders

Respectfully,

Clerk